



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0511; FRL-9718-8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to adoption by Maryland of the California Low Emission Vehicle Program (LEV), or California Clean Car Program. The underlying Maryland regulations require all new 2011 and subsequent model year passenger cars, light trucks, and medium-duty vehicles having a gross vehicle weight rating (GVWR) of 14,000 pounds or less that are sold in Maryland to meet California emission standards.

The Clean Air Act (CAA) contains authority by which other states may adopt new motor vehicle emissions standards that are identical to California's standards. Specifically, Maryland has adopted California's light and medium-duty new vehicle standards by reference, and then submitted these rules as part of the State's SIP revision to EPA. The Maryland Clean Car program has two objectives. The first is to reduce emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs), both of which are precursors to the formation of ground level ozone pollution, from new motor vehicles sold in Maryland. The second objective of the program is to reduce greenhouse gas emissions from new motor vehicles weighing under 10,000 pounds GVWR. Maryland submitted supplemental SIP revisions to modify its own program to match updates by California to its program and to harmonize with recently established Federal

(and California) greenhouse gas and fuel economy standards promulgated by EPA applicable to 2012-2016 model year vehicles of the same vehicle types covered by Maryland's rules. This action is being taken under the CAA.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0511** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: mastro.donna@epa.gov.
- C. Mail: EPA-R03-OAR-2011-0511, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0511**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or

e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814-2176, or by e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or

“our” is used, we mean EPA. On December 20, 2007, the Maryland Department of the Environment submitted a revision (#07-16) to its SIP for its Low Emission Vehicle Program, also referred to in this notice as the Maryland Clean Car Program. On November 12, 2010, Maryland submitted a revision to the 2007 SIP submittal (#10-08) to amend its Clean Car Program rules to reflect changes made by California to its LEV regulations since the time they were originally adopted by Maryland. On June 22, 2011, Maryland submitted another SIP revision (#11-05) consisting of another update to its Clean Car regulations to adopt additional changes made by California to the California LEV rules since Maryland last updated its rules and submitted them to EPA as part of the November 2010 SIP submittal.

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I. Description of the SIP Revision

A. Background

1. Maryland's Air Quality With Respect to the Ozone NAAQS

Under the 1990 CAA, eleven counties (and the City of Baltimore) in Maryland were classified as nonattainment under the 1-hour ozone NAAQS. These counties were distributed across three nonattainment areas: the Baltimore severe nonattainment area (Ann Arundel, Baltimore, Carroll, Harford, and Howard Counties, and the City of Baltimore); the Maryland portion of the Washington, DC-MD-VA serious nonattainment area (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), which was later reclassified to severe; and the Maryland portion of the Philadelphia-Wilmington-Trenton, PA-NJ-MD-DE severe nonattainment area (Cecil County). EPA revoked the 1-hour ozone NAAQS, effective June 15, 2005 (see EPA's final rule entitled "Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked" published in the August 3, 2005 Federal Register, 70 FR 4470). At the time EPA revoked the 1-hour ozone NAAQS, none of these Maryland counties had been redesignated to attainment.

Effective June 15, 2004, these same eleven Maryland counties (and the City of Baltimore) were designated by EPA as nonattainment with respect to the 1997 8-hour ozone NAAQS. Under the 1997 8-hour ozone NAAQS, these Maryland counties were again part of three separate nonattainment areas (distributed in the same means as the former 1-hour ozone standard) albeit with slightly different area names and classifications: The Baltimore, MD moderate nonattainment area; the Washington, DC-MD-VA moderate nonattainment area; and

Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate nonattainment area.

Upon designation, each of these three nonattainment areas had attainment dates no later than June 2010. On February 28, 2012, EPA determined that the Washington area attained the 1997 8-hour ozone NAAQS by its June 15, 2010 attainment date (77 FR 11739).

EPA issued a 1-year attainment date extension (i.e., from June 2010 to June 2011) for the Philadelphia-Wilmington-Atlantic City 1997 8-hour ozone nonattainment area, via a final rule published in the January 21, 2011 Federal Register (76 FR 3840). On March 26, 2012, EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date (77 FR 17341).

EPA issued a 1-year attainment date extension (i.e., from June 2010 to June 2011) for the Baltimore 1997 8-hour ozone nonattainment area, via a final rule published in the March 11, 2011 Federal Register (76 FR 13289). On February 1, 2012, EPA made a determination that (based on certified ambient air quality monitoring data from 2008-2010) the Baltimore area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. As a result, the Baltimore area was reclassified from moderate to serious 8-hour ozone nonattainment for the 1997 8-hour ozone NAAQS. Consequently, Maryland must submit SIP revisions for the Baltimore area to meet CAA serious ozone nonattainment requirements by September 2012.

On May 21, 2012, EPA designated the same eleven Maryland counties (and the City of Baltimore) as nonattainment for the 2008 8-hour ozone NAAQS (77 FR 30088). The Washington area and Maryland portion of the Philadelphia-Wilmington-Atlantic City area were classified as marginal and the Baltimore area was classified as moderate nonattainment under the

2008 8-hour ozone NAAQS.

2. What are the Relevant Statutory and Regulatory Requirements for Federal and California Vehicle Emission Standards?

Vehicles sold in the United States are required by the CAA to be certified to meet U.S. Federal emission standards or to meet California's emission standards. States are forbidden from adopting their own standards, but may adopt California's emission standards for which EPA has granted a waiver of preemption.

Section 209 of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, EPA may waive that prohibition to any state that adopted its own vehicle emission standards prior to March 30, 1966. As California was the only state to do so, California has authority under the CAA to adopt its own motor vehicle emissions standards. California must demonstrate to EPA that its newly adopted standards will be "...in the aggregate, at least as protective of public health and welfare as applicable Federal standards." EPA then must grant a waiver of preemption for California's standards, unless the demonstration fails to meet specific requirements set forth in section 209 of the CAA applicable to such a waiver demonstration.

Section 177 of the CAA authorizes other states to adopt California's standards in lieu of Federal vehicle standards, provided the state adopting California's standards does so at least two years prior to the model year in which they become effective and that EPA has issued a waiver of preemption to California for such standards.

In February 2000, EPA adopted the second tier of Federal motor vehicle standards enacted under

the 1990 CAA, via a final rule published in the Federal Register on February 10, 2000 (65 FR 6698). These standards, referred to as the Tier 2 Federal emission standards (or Tier 2 standards) were phased in beginning with the 2004 model years, except in states that had formally adopted California's emission standards in lieu of the Federal standards.

3. California's LEV Program

In 1990, California's Air Resources Board (CARB) adopted its first generation of LEV standards applicable to light and medium duty vehicles. California's vehicle emission standards program is referred to as the California Low Emissions Vehicle Program (CA LEV), or simply as the LEV program. These LEV standards were phased-in beginning in model year 1994 through model year 2003. California adopted a second generation of CA LEV standards, known as LEV II, in 1999. LEV II was phased-in beginning with model year 2004 through model year 2010. EPA granted a Federal preemption waiver for California's LEV II program on April 22, 2003 (68 FR 19811).

In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. In 2006, CARB adopted technical amendments to its LEV II program that amended the evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These technical amendments align each of California's test procedures and label requirements with its Federal counterpart, in an effort to streamline and harmonize the California and Federal programs and to reduce manufacturer testing burdens and increase in-use compliance. On July 30, 2010, EPA published a notice in the Federal Register confirming that

CARB's 2006 technical amendments are within-the-scope of existing waivers of preemption for CARB's LEV II program (75 FR 44948).

Under California's LEV II program, each vehicle manufacturer must show that their overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits become progressively lower each model year. The LEV II program requires auto manufactures to include a "smog index" label on each vehicle sold, which is intended to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

In addition to the LEV II requirements, California requires that minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer meet Zero Emission Vehicle (ZEV) standards, hereafter referred to as a ZEV program or ZEV mandate.

4. California Greenhouse Gas Vehicle Standards

California adopted Assembly Bill 1493 (A.B. 1493), into law in July 2002, which required CARB to develop and adopt greenhouse gas (GHG) emissions standards for light-duty vehicles. A.B. 1493 directed CARB to consider cost-effectiveness, technological capability, economic impacts, and flexibility for manufacturers in meeting the standard.

In August 2004, CARB approved GHG emissions standards for light-duty vehicles. CARB's standards regulated GHG emissions associated with vehicle operation, air conditioning operation and maintenance, and production of vehicle fuel. The standards apply to noncommercial light-

duty passenger vehicles manufactured for model years 2009 and beyond. The standards, specified in terms of carbon dioxide (CO₂) equivalent emissions, apply to vehicles in two size classes: passenger cars and small light-duty trucks with a loaded vehicle weight rating of 3,750 pounds or less and to heavy light-duty trucks with a loaded vehicle weight rating greater than 3,750 pounds and a GVWR less than 8,500 pounds. The CO₂ equivalent emission standard for heavy light trucks includes noncommercial passenger trucks between 8,500 pounds and 10,000 pounds GVWR. The September 2005 CARB regulations set near-term standards (to be phased in between 2009 and 2012) and mid-term standards (to be phased in between 2013 and 2016). After 2016, the CARB GHG emissions standards are fixed.

Since CARB's adoption of GHG standards, at least thirteen other states (including Maryland) have also elected to adopt CARB's GHG standards (in conjunction with CA LEV standards) under the authority of section 177 of the CAA. In June 2009, EPA granted California's request for a waiver of preemption for its GHG standards, which was published in the July 8, 2009 Federal Register (74 FR 32744). Upon issuance of this waiver, California and other states that adopted California's standards were permitted to proceed to implement California's standards.

In January 2012, CARB approved a new emissions-control program for model years 2017 through 2025. The program combines the control of smog, soot and global warming gases and requirements for greater numbers of ZEV vehicles into a single package of standards called LEV III, or Advanced Clean Cars. EPA has not yet granted a waiver for California's standards for model year 2017 and beyond.

5. Federal Greenhouse Gas Vehicle Standards

EPA and the National Highway Traffic Safety Administration (NHTSA) established a national

program to improve fuel economy of and to reduce GHG from light-duty motor vehicles, via a final rule published in the May 7, 2010 Federal Register (88 FR 25324). This rule affects new passenger cars, light-duty trucks, and medium duty passenger vehicles sold in model years 2012 through 2016. Under this national program, adopted in coordination with California, automobile manufacturers face a single set of national emissions standards that will meet both Federal and California emissions requirements. California enacted several actions to allow manufacturers to meet a single set of standards under the national GHG rules, allowing for compliance with California requirements through compliance with federal standards -- resulting in a harmonized approach to emissions control.

EPA and NHTSA issued a joint proposal in the December 1, 2011 Federal Register (76 FR 74854) to further reduce greenhouse gas emissions and to improve fuel economy of new light- and medium-duty vehicles sold beyond the 2016 model year. This proposed rule would extend the National Program beyond 2016 by tightening GHG and CAFE standards between model years 2017 and 2025.

B. Maryland's Clean Car Program

1. Overview - Maryland's Clean Car Program Rules.

In order to address ambient air quality in the state, Maryland's legislature adopted and the Governor signed the Maryland Clean Cars Act of 2007, the purpose of which was to implement the California's LEV program. This statute compelled the adoption by the Maryland Department of Environment of a final rule in November 2007 to implement California's LEV standards. This rule established a new Maryland regulatory chapter COMAR 26.11.34, entitled "Low Emission Vehicle Program."

The regulation requires all 2011 and newer model year passenger cars, light-duty trucks, and medium-duty vehicles having a GVWR of 14,000 pounds or less that are sold as new cars or are transferred in Maryland to meet the applicable California emissions standards. For purposes of the Maryland Clean Car Program, transfer means to sell, import, deliver, purchase, lease, rent, acquire, or receive a motor vehicle for titling or registration in Maryland. The purpose of the program is to achieve two air quality objectives. The first is to reduce emissions of NO_x and VOCs, which are ground-level ozone precursor pollutants. The LEV program reduces emissions in a similar manner to the Federal Tier 2 program by use of declining fleet average non-methane organic gas (NMOG) emission standards, applicable to each vehicle manufacturer each year. Separate fleet average standards are not established for NO_x, carbon monoxide (CO), particulate matter (PM), or formaldehyde as these emissions are controlled as a co-benefit of the NMOG fleet average (fleet average values for these pollutants are set by the certification standards for each set of California prescribed certification standards.) These allowable sets of standards range from LEV (the least stringent standard set) to ZEVs (the most stringent standard set). In between these fall: Ultra-Low Emission Vehicles (ULEV), Super-Ultra Low Emission Vehicles (SULEV), Partial Zero Emission Vehicles (PZEV), and Advanced Technology-Partial Zero Emission Vehicles (AT-PZEV). Each manufacturer may comply by selling a mix of vehicles meeting any of these standards, as long as their sales-weighted, overall average of the various standard sets meets the overall fleet average and ZEV requirements.

The second objective of the program is to reduce GHG emissions. To further both objectives, Maryland adopted California's ZEV program requirements, which serve as a means to promote advanced technology vehicles that are cleaner than traditional gasoline- and diesel-powered

vehicles. The GHG standards were to phase-in between model year 2009 and 2016; however, recently passed Federal GHG standards began to be phased-in beginning with model year 2012. The GHG program also uses a fleet average compliance method, similar in methodology to that of the NMOG fleet average for the LEV program. Overall compliance is demonstrated by showing that the entire fleet of vehicles produced by each manufacturer (as distributed within the allowable standard sets) meets the specified fleet average NMOG and GHG standards.

California has reached an agreement with EPA to allow compliance with the Federal GHG standards as a compliance option for California's standards, between 2012 and 2016. Both the LEV and GHG standards for model year 2012-2016 light and medium duty vehicles are already in effect in Maryland.

2. Maryland's Clean Car Program SIP Revisions

a. Maryland's December 2007 SIP Revision

Maryland proposed adoption of its new regulations .01 to .14 under a new chapter, COMAR 26.11.34, entitled "Low Emission Vehicle Program" in the Maryland Register on August 31, 2007. The regulations were adopted on November 19, 2007, and became state effective on December 17, 2007. Maryland formally submitted a SIP revision for the Maryland Clean Car Program to EPA on December 20, 2007. This SIP revision contained Maryland's incorporation of California's LEV program regulations, which results in a declining fleet average standard (for each vehicle manufacturer) for both NMHC and GHGs, applicable to new model year 2011 and newer light-duty vehicles and trucks and medium-duty vehicles. Maryland's regulations established initial NMOG credit balances for manufacturer credit account balances to reconcile the schedule of the Maryland program to that of the earlier California program and to provide

parity for manufacturers between Maryland and California at the onset of the Maryland program. Maryland's regulations in the 2007 SIP revision submittal also included ZEV program requirements for Maryland and established ZEV credit account balances to provide parity between California and Maryland with respect to the timing of Maryland's ZEV program. Finally, the 2007 SIP submittal contains general regulatory compliance provisions that extend California-defined rights to compliance with California's standards in Maryland.

b. Maryland's November 2010 SIP Revision

Subsequently, Maryland submitted a SIP revision on November 12, 2010 to submit updates made by the State to its LEV Program rule. Specifically, this SIP submittal includes changes made by Maryland to regulation .02 Incorporation by Reference under COMAR 26.11.34. This regulatory revision was adopted by Maryland on October 16, 2009 and became effective in Maryland on November 16, 2009. The purpose of the SIP revision including this rule revision was to update Maryland's incorporation by reference to be consistent with changes made by California to its LEV rules. Since the time that Maryland initially adopted California's rules in 2007, California had updated its rules to streamline its evaporative emissions requirements, to amend its on-board diagnostics and emissions warranty provisions, to amend its in-use vehicle recall provisions, to amend its smog label requirements, and to revise its ZEV methodology and credit accounting system. Although the changes made by California (and the resulting changes made by Maryland to its incorporation of California's rules by reference) are minimal, they are important for purposes of making sure Maryland's rules are consistent with those of California, in compliance with the requirements for adoption of California standards by other states, pursuant to section 177 of the CAA. These changes serve primarily to achieve consistency between Maryland's and California's rules, for purposes of maintaining parity of Maryland's

rules with those of California.

c. Maryland's June 2011 SIP Revision

Maryland again submitted a SIP revision submittal on June 22, 2011 to submit updates made by the state to its LEV Program rule. Specifically, this SIP revision includes changes made by Maryland to regulation .02 Incorporation by Reference under COMAR 26.11.34. This regulatory revision was adopted by Maryland on April 14, 2011 and became effective in Maryland on May 16, 2011. The purpose of the SIP revision including this rule revision was to update Maryland's incorporation by reference to be consistent with changes made by California to its LEV rules. Since the time that Maryland initially adopted California's rules in 2007, California had updated its rules to: improve on-board diagnostic and emission standards for testing vehicles; adopt standards for testing plug-in hybrid electric vehicle conversions; and to adopt the national GHG emissions standards framework agreement between the EPA, NHTSA, and CARB. Although the changes made by California (and the resulting changes made by Maryland to its incorporation of California's rules by reference) are minimal, they are important for purposes of making sure Maryland's rules are consistent with those of California, in compliance with the requirements for adoption of California standards by other states, per section 177 of the CAA. These changes serve primarily to achieve consistency between Maryland's and California's rules, for purposes of maintaining parity of Maryland's rules with those of California.

II. Proposed Action

EPA is proposing to approve three Maryland SIP revisions submitted to EPA adopting the Maryland Clean Car Program. Maryland adopted California's LEV and ZEV programs, in

addition to California's GHG emissions standards for light-duty passenger vehicles and trucks and medium-duty vehicles. Maryland initially submitted the first of these three SIP revisions on December 20, 2007. Maryland subsequently submitted the second of these three SIP revisions to EPA on November 12, 2010, to amend its 2007 SIP revision. Maryland then submitted a SIP revision on June 22, 2011, to amend its earlier SIP revisions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve Maryland's Clean Car Program does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 08, 2012.

W. C. Early, Acting
Regional Administrator,
Region III.

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